

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0166
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JACOB MICHAEL AGUILAR,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20083204

Honorable Frank Dawley, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and David A. Sullivan

Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Robb P. Holmes

Tucson
Attorneys for Appellant

HOWARD, Chief Judge.

¶1 After a jury trial, appellant Jacob Aguilar was convicted of one count of second-degree burglary. The trial court suspended imposition of sentence and placed Aguilar on three years' probation, which included a 180-day term of imprisonment. On appeal, Aguilar argues the state presented insufficient evidence to support his conviction. Because sufficient evidence was presented, we affirm.

¶2 “We view the facts in the light most favorable to sustaining the conviction[.]” *State v. Robles*, 213 Ariz. 268, ¶ 2, 141 P.3d 748, 750 (App. 2006). Aguilar and two companions drove to a vacant home and entered through a back window. When sheriff's deputies arrived, the three fled the scene. While searching the premises, an officer found a car parked in the garage that was eventually determined to belong to the mother of one of Aguilar's companions. The doors and trunk of the car were open, and various items of property from the house were inside. One of Aguilar's companions was also later found to be carrying several items from the home, including compact discs and jewelry.

¶3 When officers apprehended Aguilar soon afterward, he claimed that A.F., the homeowners' daughter, had given him permission to enter the house. A.F. did not testify at trial. Her mother, W.F., did testify, however, and stated that she had not given Aguilar permission to enter her home.

¶4 Aguilar argues that the evidence was insufficient to support his conviction for second-degree burglary, because the state “failed to prove that [he] did not have [A.F.'s] permission to enter [her parents'] house and remove property.” This court will reverse a conviction for insufficient evidence only when there is “no substantial evidence to warrant a conviction.” *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990), *quoting* Ariz. R. Crim. P. 20(a). Substantial evidence is “evidence that

‘reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt.’” *State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 913-14 (App. 2005), quoting *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997). “Evidence may be direct or circumstantial, but if reasonable minds can differ on inferences to be drawn therefrom, the case must be submitted to the jury.” *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993) (citation omitted).

¶5 To prove a defendant guilty of second-degree burglary, the state must show, inter alia, that the defendant entered a residential structure unlawfully with the intent to commit a theft or felony therein. A.R.S. § 13-1507. A defendant enters a structure unlawfully when his “intent for . . . entering . . . is not licensed, authorized or otherwise privileged.” A.R.S. § 13-1501(2).

¶6 Evidence was presented from which the jury could conclude that Aguilar entered the victims’ home without permission. See *Landrigan*, 176 Ariz. at 4, 859 P.2d at 114 (evidence can be direct or circumstantial). Aguilar claimed he had gone to the house to pick up some of A.F.’s belongings. But W.F. testified that A.F. had moved out of the house before Aguilar entered, and an officer on the scene also stated that no one appeared to be living in the home at the time. And although Aguilar told officers that A.F. had been with him in the house and had run into the desert after a dog, police never encountered her. Moreover, Aguilar claimed A.F. had called him and he had her name and telephone number in his cellular telephone, but the officer did not find the number or any calls from A.F. recorded on Aguilar’s telephone.

¶7 Aguilar also claimed in a post-arrest interview to have entered the home through the back door, but an officer present at the scene testified that Aguilar had admitted he did not have a key to the house and that the screen on one of the house’s rear

windows had been removed and the window was open. And, when the officers arrived at the house, one of Aguilar's companions shouted, "[O]h s***, cops," as he and Aguilar fled into the nearby desert. *See State v. Salazar*, 173 Ariz. 399, 409, 844 P.2d 566, 576 (1992) (flight can indicate consciousness of guilt).

¶8 The jury was not required to believe Aguilar's explanation of why he was in the home, which was contradicted by other evidence. *See State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) (witness credibility issue for jury). That different inferences could be drawn from the trial testimony does not assist Aguilar. *See State v. Walker*, 181 Ariz. 475, 479, 891 P.2d 942, 946 (App. 1995) (evidence not insufficient solely because contradicted). Sufficient evidence was presented to support Aguilar's second-degree burglary conviction. We therefore affirm the conviction and sentence.¹

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

ANN A. SCOTT TIMMER, Judge*

*The Honorable Ann A. Scott Timmer, Chief Judge of Division One of the Arizona Court of Appeals, is authorized to participate in this appeal pursuant to A.R.S. § 12-120(F) (2003).

¹Because this case is controlled by Arizona law, we need not analyze the foreign law Aguilar cites.